



Indiana Department of Education

SUPPORTING STUDENT SUCCESS

Office of Title I Academic Support

July 6, 2009

Mr. J. David Donahue, Commissioner
Indiana Department of Correction #9100
302 West Washington Street
Indiana Government Center South Room E334
Indianapolis, Indiana 46204

Dear Mr. Donahue:

On June 4, 2009, the Indiana Department of Education's (IDOE) monitoring team commenced an on-site monitoring review of the Indiana Department of Correction's (IDOC) administration and oversight of Title I, Part D of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the *No Child Left Behind Act* (NCLB). Enclosed is a report based upon this review.


The enclosed report summarizes the results of our on-site monitoring review. **Within 30 business days of the date of this letter**, please submit a response, and where appropriate, further documentation. IDOE will review the documentation and determine if it is sufficient to remove or remedy identified compliance problems.

In all cases where there are findings of non-compliance, **Indiana Department of Correction is responsible for taking appropriate action to remedy compliance deficiencies**. In some instances this can occur immediately and in some instances a longer term solution may be necessary. Where longer term measures are necessary, IDOC must submit a specific detailed action plan with timelines and benchmarks for corrective action. IDOE will provide technical assistance as appropriate.

We would like to thank you and your staff, as well as the staff at Pendleton Juvenile Center, for their work and assistance provided prior to and during the review in gathering materials and providing access to information in a timely manner.

We look forward to continued cooperation in working with you and your staff members on any follow-up activities to assist in the effective delivery of Title I services for students residing at Pendleton Juvenile Center.

Sincerely,



Jamie Miller, Assistant Director
Division of Differentiated Learning

cc: Dr. John Nally, Superintendent
Indiana Department of Correction #9100

Dr. Susan Lockwood, Title I Program Administrator
Indiana Department of Correction #9100

Mr. Michael Dempsey, Executive Director
Division of Youth Services
Indiana Department of Correction #9100

Mr. Steve White, Facility Director
Pendleton Juvenile Center

Lee Ann Kwiatkowski, Director
Division of Differentiated Learning
Indiana Department of Education

**Indiana Department of Education
Title I, Part D Monitoring**

State Agency: Indiana Department of Correction

Part D Institution: Pendleton Juvenile Center

Monitoring Date: June 4, 2009

Monitoring Team: Jamie Miller and Becky Johnson

Background Information

The Indiana Department of Education (IDOE) conducted an on-site monitoring visit with the Indiana Department of Correction (IDOC) on June 4, 2009. The purpose of this monitoring visit was to identify areas of strength, areas that need improvement, and areas of non-compliance with Title I, Part D and federal grants management (fiscal) requirements.

IDOE specifically monitored in the following areas:

1. State agencies must provide an annual count to the State for the number of students residing in the institution during the required window of time to generate Title I funds. NCLB §1402(a); NCLB §1412
2. State agencies receiving Subpart 1 funds must assess the educational needs and academic progress of all eligible children and youth in eligible institutions. NCLB §1414(c)(1); NCLB §1431
3. State agencies receiving Subpart 1 funds must offer a regular program of instruction for at least 20 hours per week for youth, unless served in an adult correctional facility (15 hours per week). Title I instruction must be supplemental. NCLB §1412(a); NCLB §1415(b)
4. State agencies receiving Subpart 1 funds must implement programs and projects that are designed to support educational services that afford youth an opportunity to meet challenging academic achievement standards and must designate an individual in each affected correctional facility or institution for neglected or delinquent children and youth to be responsible for issues relating to the transition of children and youth from such facility or institution to locally operated programs. NCLB §1415; NCLB §1418
5. Title I staff are appropriately qualified to work with children and youth in institutions, including students with disabilities, if applicable. State agencies receiving Subpart 1 funds must provide evidence of a procedure for appropriate professional development to teachers and other staff. NCLB §1414 (c) (10), (17)
6. Parents are involved in efforts to improve the educational achievement of their children and to prevent further involvement of such children in delinquent activities, if applicable. NCLB §1414(c)(14)
7. A State agency that provides free public education for children and youth in an institution for neglected or delinquent children and youth (other than an adult correctional institution) or attending a community-day program for such children and youth may use funds received under this subpart to serve all children in, and upgrade the entire educational effort of, that institution or program if the State agency has developed, and the State educational agency has approved, a comprehensive plan for that institution or program NCLB §1416
8. Each state agency that conducts a program under Subpart 1 shall evaluate the program, disaggregating data on participation by race, gender, ethnicity, and age, to determine the program's impact on participants. NCLB §1431
9. State agencies receiving Subpart 1 funds must coordinate with other appropriate State and Federal programs, such as programs under Title I of Public Law 105-220, vocational and technical education programs, State and local dropout prevention programs, special education programs and businesses for training and mentoring for participating children and youth. NCLB §1414(c)(8); NCLB §1414(c)(19)
10. State agencies receiving Subpart 1 funds must encourage coordination between correctional facilities and local educational agencies or alternative education programs attended by incarcerated children and

youth prior to their incarceration to ensure that student assessments and appropriate academic records are shared jointly between the correctional facility and the local educational agency or alternative education program NCLB §1414(c)(9)

11. The state agency must work with children and youth with disabilities in order to meet an existing individualized education program. The state agency must notify the student's local school if the student is identified as in need of special education services while the student is in the facility and the student intends to return to the local school. NCLB §1414(c)(15)(A)(B)

12. State agencies receiving Subpart 1 funds must provide additional services to children and youth, such as career counseling, distance learning, and assistance in securing student loans and grants. NCLB §1414(c)(18)

13. The state agency has procedures that ensure fiscal control. EDGAR §80.20; EDGAR §80.36

14. Compliance with equipment requirements. EDGAR §80.32 & OMB Circular A-87

During the on-site visit, IDOE spent time interviewing staff from Indiana Department of Correction at their central office. In addition, IDOE visited Pendleton Juvenile Center and conducted a walk-through of the building.

IDOE also reviewed documents from Indiana Department of Correction and Pendleton Juvenile Center pertaining to the Title I, Part D program. Based on the above information, our report follows.

Monitoring Topic 1: State agencies must provide an annual count to the State for the number of students residing in the institution during the required window of time to generate Title I funds.

Background

IDOE interviewed the Title I Program Administrator. In addition, IDOE reviewed student enrollment lists for students that resided in the institution during the October annual count window.

Statutory Requirement: Annual count requirements are contained in Section 1402(a) and Section 1412 of Title I.

Areas of Compliance

Annual Survey of Children in Local Institutions for Neglected or Delinquent Children:

IDOC was able to provide student enrollment records verifying that all students reported on the Annual Survey resided in Pendleton Juvenile Center at the time of the required child count.

Monitoring Topic 2: State agencies receiving Subpart 1 funds must assess the educational needs and academic progress of all eligible children and youth.

Background

IDOE interviewed the Title I Program Administrator, as well as staff at Pendleton Juvenile Center, to discuss student assessment of progress and educational needs.

Each State agency or local educational agency that conducts a program under subpart 1 or 2 shall evaluate the program, disaggregating data on participation by gender, race, ethnicity, and age, not less than once every 3 years, to determine the program's impact on participants

Areas of Compliance

Staff at Pendleton Juvenile Center regularly assesses student progress. Evidence was provided of student assessments within the Education Transition Portfolio, which comprises a variety of data including TABE scores, student learning and career surveys, formal writing samples, and an Inventory of Essential Skills. Student data are tracked and used to develop Individual Education Programs and Individual Learning Plans.

Monitoring Topic 3: State agencies receiving Subpart 1 funds must offer a regular program of instruction for at least 20 hours per week for youth, unless served in an adult correctional facility (15 hours per week). Title I instruction must be supplemental to the regular program of instruction.

Background

IDOE interviewed the Title I Program Administrator to discuss the educational program.

Each State agency described in section 1411 (other than an agency in the Commonwealth of Puerto Rico) is eligible to receive a subgrant under this subpart, for each fiscal year, in an amount equal to the product of—

(A) the number of neglected or delinquent children and youth described in section 1411 who—

(i) are enrolled for at least 15 hours per week in education programs in adult correctional institutions; and

(ii) are enrolled for at least 20 hours per week— and

(I) in education programs in institutions for neglected or delinquent children and youth

A program under this subpart that supplements the number of hours of instruction students receive from State and local sources shall be considered to comply with the supplement, not supplant requirement of section 1120A (as applied to this part) without regard to the subject areas in which instruction is given during those hours.

Areas of Compliance

IDOC Administrative Policies and Procedures demonstrated compliance with the delivery of educational services to students housed within Department facilities. It should be noted that all high school credits earned in department juvenile facilities are transferable to an Indiana Core 40 High School Diploma.

Classroom schedules were provided that verified the required hours of regular program instruction and supplemental Title I instruction at Pendleton Juvenile Center. Students attend school for a minimum of 5 days per week for 6 50-minute periods per day.

Monitoring Topic 4: State agencies receiving Subpart 1 funds must implement programs and projects that are designed to support educational services that afford youth an opportunity to meet challenging academic achievement standards and must designate an individual in each affected correctional facility to be responsible for issues relating to the transition of children and youth from such facility to locally operated programs.

Background

IDOE interviewed the program administrator to discuss educational and transition services.

A State agency shall use funds received under this subpart only for programs and projects that—
(A) are consistent with the State plan under section 1414(a); and

(B) concentrate on providing participants with the knowledge and skills needed to make a successful transition to secondary school completion, vocational or technical training, further education, or employment.

(2) PROGRAMS AND PROJECTS—Such programs and projects

Each State agency shall reserve not less than 15 percent and not more than 30 percent of the amount such agency receives under this subpart for any fiscal year to support—

(1) projects that facilitate the transition of children and youth from State-operated institutions to schools served by local educational agencies; or

(2) the successful reentry of youth offenders, who are age 20 or younger and have received a secondary school diploma or its recognized equivalent, into postsecondary education, or vocational and technical training programs, through strategies designed to expose the youth to, and prepare the youth for, postsecondary education, or vocational and technical training programs.

Areas of Compliance

Evidence was provided of IDOC's Education Program Plan and Transition Procedures.

Appropriate staff members are designated to be responsible for issues relating to the transition of children and youth from IDOC facilities to locally operated programs.

Monitoring Topic 5: Title I staff are appropriately qualified to work with children and youth in institutions, including students with disabilities if applicable. State agencies receiving Subpart 1 funds must provide evidence of a procedure for providing appropriate professional development to teachers and other staff.

Background

IDOE interviewed the Title I Program Administrator regarding staff qualifications and professional development.

Any State agency that desires to receive funds to carry out a program under this subpart shall submit an application to the State educational agency that— describes how appropriate professional development will be provided to teachers and other staff; provides an assurance that teachers and other qualified staff are trained to work with children and youth with disabilities and other students with special needs taking into consideration the unique needs of such students

Areas of Compliance

IDOC provided evidence of appropriate staff qualifications as well as professional development schedules and topics consistent with identified instructional needs.

Monitoring Topic 6: Parents are involved in efforts to improve the educational achievement of their children and to prevent further involvement of such children in delinquent activities.

Background

IDOE interviewed the Program Administrator to discuss parental involvement.

Any State agency that desires to receive funds to carry out a program under this subpart shall submit an application to the State educational agency that - provides assurances that the State agency will work with parents to secure parents' assistance in improving the educational achievement of their children and youth, and preventing their children's and youth's further involvement in delinquent activities

Areas of Compliance

Evidence was provided of school and parent communications, including meetings with parents as needed.

Monitoring Topic 7: State agencies receiving Subpart 1 funds for institution-wide projects must consult with experts and provide the necessary training for appropriate staff to ensure that the planning and operation of institution-wide projects under section 1416 are of high quality.

Not currently applicable for monitoring purposes. IDOC facilities are not operating as institution-wide projects.

Monitoring Topic 8: Each state agency that conducts a program under Subpart 1 shall evaluate the program, disaggregating data on participation by race, gender, ethnicity, and age, to determine the program's impact on participants.

Background

IDOE interviewed the Title I Program Administrator and discussed evaluation of the program, including reports submitted to IDOE.

Each State agency or local educational agency that conducts a program under subpart 1 or 2 shall evaluate the program, disaggregating data on participation by gender, race, ethnicity, and age, not less than once every 3 years, to determine the program's impact on the ability of participants —

(1) to maintain and improve educational achievement;

(2) to accrue school credits that meet State requirements for grade promotion and secondary school graduation;

(3) to make the transition to a regular program or other education program operated by a local educational agency;

(4) to complete secondary school (or secondary school equivalency requirements) and obtain employment after leaving the correctional facility or institution for neglected or delinquent children and youth; and

(5) as appropriate, to participate in postsecondary education and job training programs.

Areas of Compliance

IDOC has put systems in place to track and submit the required Title I data collections for student participation and student outcomes. Evaluation results are used to inform program design and student learning plans.

Monitoring Topic 9: State agencies receiving Subpart 1 funds must coordinate with other appropriate State and Federal programs, such as programs under Title I of Public Law 105-220, vocational and technical education programs, State and local dropout prevention programs, special education programs and businesses for training and mentoring participating children and youth.

Background

IDOE interviewed the Title I Program Administrator regarding coordination of funds.

Any State agency that desires to receive funds to carry out a program under this subpart shall submit an application to the State educational agency that - describes how the programs will be coordinated with other appropriate State and Federal programs, such as programs under Title I of Public Law 105-220, vocational and technical education programs, State and local dropout prevention programs, and special education programs.

-provides an assurance that the program under this subpart will be coordinated with any programs operated under the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5601 et seq.) or other comparable programs, if applicable.

Areas of Compliance

Available funding is coordinated as applicable to provide comprehensive services to participating children and youth. IDOC currently has a Memorandum of Understanding with the Indiana Family and Social Services Administration, Bureau of Rehabilitation Services wherein supportive social services are provided. IDOC continues to explore partnerships with other relevant programs and businesses to provide students with additional career and technical preparation.

Monitoring Topic 10: State agencies receiving Subpart 1 funds must encourage coordination between correctional facilities and local educational agencies or alternative education programs attended by incarcerated children and youth prior to their incarceration to ensure that student assessments and

appropriate academic records are shared jointly between the correctional facility and the local educational agency or alternative education program.

Background

IDOE interviewed the Title I Program Administrator to discuss coordination between local schools and programs.

Any State agency that desires to receive funds to carry out a program under this subpart shall submit an application to the State educational agency that— describes how the State agency will encourage correctional facilities receiving funds under this subpart to coordinate with local educational agencies or alternative education programs attended by incarcerated children and youth prior to their incarceration to ensure that student assessments and appropriate academic records are shared jointly between the correctional facility and the local educational agency or alternative education program.

Areas of Compliance

IDOE and IDOC collaborated to develop the Education Transition Portfolio in order to facilitate and expedite the transfer of student records from IDOC to the local school district. Evidence was provided of communications with local districts.

Monitoring Topic 11: The State agency must work with children and youth with disabilities in order to meet an existing individualized education program. The State agency must notify the student's local school if the student is identified as in need of special education services while the student is in the facility and the student intends to return to the local school.

Background

IDOE interviewed the Title I Program Administrator.

Any State agency that desires to receive funds to carry out a program under this subpart shall submit an application to the State educational agency that— provides an assurance that the State agency will work with children and youth with disabilities in order to meet an existing individualized education program and an assurance that the agency will notify the child's or youth's local school if the child or youth—

(A) is identified as in need of special education services while the child or youth is in the correctional facility or institution for neglected or delinquent children and youth; and

(B) intends to return to the local school

Areas of Compliance

Evidence was provided of IDOC's compliance with the notification of local schools as well as the provision of individual education programs.

Monitoring Topic 12: State agencies receiving Subpart 1 funds must provide additional services to children and youth, such as career counseling, distance learning, and assistance in securing student loans and grants.

Background

IDOE interviewed the Title I Program Administrator to discuss programs for transition assistance.

Any State agency that desires to receive funds to carry out a program under this subpart shall submit an application to the State educational agency that— describes any additional services to be provided to children and youth, such as career counseling, distance learning, and assistance in securing student loans and grants.

Areas of Compliance

Evidence was provided of IDOC courses and partnerships with post-secondary programs that provide career guidance and exploration.

Monitoring Topic 13: Compliance with Financial Management Systems Requirements

Background

IDOE interviewed the Title I Program Administrator regarding the financial management system.

Regulatory Requirement: Section 80.20 (b)-(i) of the Education Department General Administrative Regulations (EDGAR) details the threshold requirements financial management systems for sub-grantees.

Areas of Compliance

Financial Management and Procurement: IDOC demonstrated evidence of a compliant process for purchases. Purchase orders and invoices supported expenditures of the approved budgets.

Monitoring Topic 14: Compliance with equipment requirements – OMB A-87 and EDGAR 80.32

Background

IDOE interviewed the Title I Program Administrator and Pendleton Juvenile Center staff regarding compliance with equipment requirements.

Regulatory Requirement: Section 80.32 of the Education Department General Administrative

Regulations (EDGAR) details the threshold requirements for the use, management and disposition of equipment acquired with federal funds by sub-grantees.

Areas of Compliance

Disposition of Equipment: IDOC follows the disposal guidelines for State Agencies.

Equipment Labeling: IDOC provided evidence that all equipment purchased with Title I funds was properly labeled and identified.

Findings of Non-Compliance, Required Actions and Recommendations for Monitoring Topic 11

Equipment/Technology Inventory List: IDOC provided evidence of an individual equipment/technology inventory list for property purchased with Title I, Part D funds, but the list does not contain all information required by EDGAR.

Required Action: IDOC needs to expand the equipment lists for all property purchased for the Title I program to also include the acquisition date, the cost of the property, assurance that Title I holds the title, the percentage of Federal participation, use and condition of the property, and the ultimate disposition data, including date of disposal and sale price. A template can be found at http://www.doe.in.gov/TitleI/monitoring_resources.html.

Appendix Topic 1

EDGAR 80.36

Sec. 80.36 Procurement.

(a) States. When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders

and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) Procurement standards. (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property

whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only:

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and

(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) Competition. (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of Sec. 80.36. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,

(ii) Requiring unnecessary experience and excessive bonding,

(iii) Noncompetitive pricing practices between firms or between affiliated companies,

- (iv) Noncompetitive awards to consultants that are on retainer contracts,
- (v) Organizational conflicts of interest,
- (vi) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement, and
- (vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(d) Methods of procurement to be followed--(1) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at \$100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in Sec. 80.36(d)(2)(i) apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;
(B) Two or more responsible bidders are willing and able to compete effectively and for the business; and
(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures,

sealed bids or competitive proposals and one of the following circumstances applies:

- (A) The item is available only from a single source;
 - (B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
 - (C) The awarding agency authorizes noncompetitive proposals; or
 - (D) After solicitation of a number of sources, competition is determined inadequate.
- (ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required.
- (iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.
- (e) Contracting with small and minority firms, women's business enterprise and labor surplus area firms. (1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.
- (2) Affirmative steps shall include:
- (i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - (ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - (iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
 - (iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
 - (v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and
 - (vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.
- (f) Contract cost and price. (1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.
- (2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to

the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see Sec. 80.22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) Awarding agency review. (1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc. when:

- (i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or
- (ii) The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or
- (iii) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a "brand name" product; or
- (iv) The proposed award is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
- (v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.

(3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis.

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) Bonding requirements. For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition

threshold, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) Contract provisions. A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold)

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)

(3) Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees)

(4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts and subgrants for construction or repair)

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5).

(Construction contracts in excess of \$2000 awarded by grantees and subgrantees when required by Federal grant program legislation)

(6) Compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to

copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000)

(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

(j) Contracting with faith-based organizations. (1)(i) A faith-based organization is eligible to contract with grantees and subgrantees, including States, on the same basis as any other private organization, with respect to contracts for which such other organizations are eligible.

(ii) In the selection of goods and services providers, grantees and subgrantees, including States, shall not discriminate for or against a private organization on the basis of the organization's religious character or affiliation.

(2) The provisions of Sec. Sec. 75.532 and 76.532 applicable to grantees and subgrantees apply to a faith-based organization that contracts with a grantee or subgrantee, including a State, unless the faith-based organization is selected as a result of the genuine and independent private choices of individual beneficiaries of the program and provided the organization otherwise satisfies the requirements of the program.

(3) A private organization that engages in inherently religious activities, such as religious worship, instruction, or proselytization, must offer those services separately in time or location from any programs or services supported by a contract with a grantee or subgrantee, including a State, and participation in any such inherently religious activities by beneficiaries of the programs supported by the contract must be voluntary, unless the organization is selected as a result of the genuine and independent private choices of individual beneficiaries of the program and provided the organization otherwise satisfies the requirements of the program.

(4)(i) A faith-based organization that contracts with a grantee or subgrantee, including a State, may retain its independence, autonomy, right of expression, religious character, and authority over its governance.

(ii) A faith-based organization may, among other things--

(A) Retain religious terms in its name;

(B) Continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs;

(C) Use its facilities to provide services without removing or altering religious art, icons, scriptures, or other symbols from these

facilities;

(D) Select its board members and otherwise govern itself on a religious basis; and

(E) Include religious references in its mission statement and other chartering or governing documents.

(5) A private organization that contracts with a grantee or subgrantee, including a State, shall not discriminate against a beneficiary or prospective beneficiary in the provision of program services on the basis of religion or religious belief.

(6) A religious organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, in section 702(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-1, is not forfeited when the organization contracts with a grantee or subgrantee.

Appendix Topic 2

EDGAR 80.32

Sec. 80.32 Equipment.

(a) Title. Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) States. A State will use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. Other grantees and subgrantees will follow paragraphs (c) through (e) of this section.

(c) Use. (1) Equipment shall be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.

(2) The grantee or subgrantee shall also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in Sec. 80.25(a) to earn program income, the grantee or subgrantee must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute.

(4) When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.

(d) Management requirements. Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the grantee or subgrantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) Disposition. When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:

(1) Items of equipment with a current per-unit fair market value of less than \$5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.

(2) Items of equipment with a current per unit fair market value in excess of \$5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment.

(3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition actions.

(f) Federal equipment. In the event a grantee or subgrantee is provided federally-owned equipment:

(1) Title will remain vested in the Federal Government.

(2) Grantees or subgrantees will manage the equipment in accordance with Federal agency rules and procedures, and submit an annual inventory listing.

(3) When the equipment is no longer needed, the grantee or subgrantee will request disposition instructions from the Federal agency.

(g) Right to transfer title. The Federal awarding agency may reserve the right to transfer title to the Federal Government or a third party named by the awarding agency when such a third party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:

(1) The property shall be identified in the grant or otherwise made known to the grantee in writing.

(2) The Federal awarding agency shall issue disposition instruction within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar-day period the grantee shall follow Sec. 80.32(e).

(3) When title to equipment is transferred, the grantee shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

(h) The provisions of paragraphs (c), (d), (e), and (g) of this section do not apply to disaster assistance under 20 U.S.C. 241-1(b)-(c) and the construction provisions of the Impact Aid Program, 20 U.S.C. 631-647.